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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,408	02/12/2004	Gregory G. Griesse	117P45USC2	5788
23322	7590	12/30/2005	EXAMINER	
IPLM GROUP, P.A. POST OFFICE BOX 18455 MINNEAPOLIS, MN 55418			DOERRLER, WILLIAM CHARLES	
			ART UNIT	PAPER NUMBER
			3744	

DATE MAILED: 12/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/777,408

Applicant(s)

GRIESE ET AL.

Examiner

William C. Doerrler

Art Unit

3744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2-12-04, 12-7-04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,14,18,20,23,29 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Haertle.

Haertle discloses an adhesive mounting plate 7 which is attached with Velcro 6 to a solid fabric softening device 8.

Claims 1,14,18,20,23,29 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Mizuno '145.

Mizuno '145 shows a fastening plate 13 which fastens to a surface and uses Velcro 11 to fasten to a fabric softener solid 7.

Claims 1,14,18-20,23,24,29,34, 35 and 40-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Mizuno et al '685. Mizuno et al '685 show an attaching plate 13 which uses velcro to fasten to a solid 10 fabric softener. Parts 14 and 15 in figure 4 show a bracket and clip which slide together to fasten the plate with the solid.

Claims 1-3,10,11,14,18,20,23,29-31,35-37 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Clothier et al.

Clothier et al show a dome shaped (figs 1-3) fabric softening solid which is attached to a drier using Velcro, suction cups, or knobs, hooks or strings (col. 2 lines 47-55). Column 9 lines 24-35 discuss the solidification of the solid material unto the substrate.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 2,3,9-13,21,22,24,25 and 30-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Haertle or Mizuno '145.

Haertle and Minuno '145 disclose applicants' basic inventive concept, a fabric softening device which removable fastens to an attaching plate which fastens to the inside of the drier, substantially as claimed with the exception of forming the solid as a dome, or using grooves, holes and plugs or mating lips to fasten the device. Official Notice is

taken that grooves, plugs and holes and mating lips are well known in the solids fastening art and as such would have been an obvious modification to produce a secure, yet easily removed connection. In regard to the dome shape, the change of shape is considered a matter of obvious design choice that will not greatly effect the functioning of the device. This is evidenced by the fact that applicants have disclosed multiple shapes.

Claims 9-13,21,22,25 and 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mizuno et al '685.

Minuno et al '685 discloses applicants' basic inventive concept, a fabric softening device which removable fastens to an attaching plate which fastens to the inside of the drier, substantially as claimed with the exception of using grooves, holes and plugs or mating lips to fasten the device. Official Notice is taken that grooves, plugs and holes and mating lips are well known in the solids fastening art and as such would have been an obvious modification to produce a secure, yet easily removed connection.

Claims 9,12,13,21,22,24,25,32-34 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clothier et al.

Clothier et al discloses applicants' basic inventive concept, a fabric softening device which removable fastens to an attaching plate which fastens to the inside of the drier, substantially as claimed with the exception of using grooves, holes and plugs or mating lips to fasten the device. Official Notice is taken that grooves, plugs and holes and mating lips are well known in the solids fastening art and as such would have been an obvious modification to produce a secure, yet easily removed connection.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-43 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-30 of U.S. Patent No. 6,883,723.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the current claims are broader than the patented claims, with the addition that a substantial portion of the product is exposed. It is considered obvious to an ordinary practitioner that an insubstantial portion of the product will most likely not perform the intended function. Thus, it is considered obvious to an ordinary practitioner in the art that a substantial amount of product should be exposed during use.

Allowable Subject Matter

Claims 4-8,15-17 and 26-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, with the submission of a terminal disclaimer.


Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Miller and Davis have been cited because the references from the parent 892 submitted as an IDS have been crossed through, as the form is not a 1449 form and will present problems for the printer if a patent results.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William C. Doerrler whose telephone number is (571) 272-4807. The examiner can normally be reached on Monday-Friday 6:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


William C Doerrler
Primary Examiner
Art Unit 3744

WCD